IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6918 OF 2007

Balasaheb Bhoju Pawar ..Petitioner

Vs.

Chief Officer, Mangalwedha Municipal Council, Mangalwedha ..Respondent

Mr. S.S. Patwardhan for petitioner.
Mr. D.A. Patil, AGP for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : December 12, 2007.

P.C.:

1. Heard Mr.Patwardhan the learned counsel for the petitioner who had approached the Industrial Court by filing Complaint (ULP) No. 108 of 2002 and prayed for the relief of permanency in the employment of the respondent - Municipal Council. The said complaint came to be dismissed by the learned Member of the Industrial Court vide his judgment and order dated 12/7/2007 and hence this petition.

2. Though the learned Member noted that the petitioner had completed 247 days of work in the year

2000-01 and 270 days of work in the subsequent year but that itself was not sufficient to hold that the Municipal Council was guilty of unfair labour practice either under Item 6 of Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The Industrial Court noted that the respondent - Municipal Council is a public body and unless the appointment was made against a sanctioned post by following the procedure laid down, the relief of permanency could not be sought and granted, by relying upon the Constitution Bench judgment in the case of Secretary, State of Karnataka and ors. vs. Umadevi (3) and ors. **[(2006) 4 SCC 1]**.

3. The Chief Officer of the respondent - Municipal Council has filed affidavit-in-reply and has admitted that the petitioner was appointed as a Clerk on casual basis from 13/2/1999 but he does not possess the requisite qualification required for the post of Clerk. The affidavit further states that there are two posts of Clerk vacant on the establishment of the Municipal Council and those are required to be filled in as per the procedure to be followed under the Rules prescribed. The reasoning set out by the Industrial

Court in the impugned order does not suffer from any error apparent on the face of the record so as to call for interference under Article 227 of the Constitution.

4. Hence, the petition is rejected summarily. At the same time it is clarified that if the petitioner is eligible for the post of Clerk, this order will not prevent him from applying as and when the regular recruitment process commenced for the post of Clerk, if he is eligible and the petitioner shall not be replaced by another daily rated employee until the said two posts are filled in.

(B.H. Marlapalle,J.)